Though this test is perhaps vague, and if ultimately adopted means the repudiation of a host of earlier cases, it is certainly more reasonable, for it gives admiralty courts jurisdiction in all cases of which they may be said to have expert knowledge, namely, those in which the transaction is maritime in its nature and concerns sea affairs.

Another manifestation of this same tendency may be observed in another recent federal case,[10] where it was held that an admiralty court had jurisdiction of a petition to limit liability for a tort clearly maritime in nature, whether or not it answered to the locality test. The court did not base its right to hear the petition wholly on the interstate commerce clause but also on that clause in the Constitution containing the grant of admiralty jurisdiction.[11] The court regarded the damage by the vessel in question as falling within the scope of the legislative power of Congress under this clause,[12] and must therefore have considered that such power extended to all tortious transactions maritime in nature, irrespective of locality. The decision in *United States v. North German Lloyd* would seem to agree with *Postal Telegraph Cable Company v. P. Sanford Ross, Incorporated.*[13]

*A. T. W.*

CONSTITUTIONAL LAW: POLICE POWER: EMPLOYMENT AGENCIES.—The mode and character of argument adopted by Mr. Justice Brandeis in his dissenting opinion in *Adams v. Tanner*,[1] as applied to a judicial opinion, are almost revolutionary. The majority opinion, written by Mr. Justice McReynolds, on the other hand, is worked out in accordance with the cut-and-dried conventions of the profession. The virtue of Mr. Justice Brandeis' method of attack has become more or less familiar to students of constitutional law through the briefs on Shorter Hours for Women,[2] The Shorter Work Day,[3] and the Oregon Minimum Wage Cases.[4] The first of these briefs was written by Mr. Brandeis himself, as counsel for Oregon, and it blazed the way for new order of legal brief. The first argument in the third of the above mentioned briefs was also prepared by Mr. Brandeis before his nomination as Associate Justice of the Supreme Court, while the completion of that brief and the preparation of the second were performed by Professor Felix Frankfurter and Miss Josephine Goldmark, the Publication Secretary of the National Consumers' League.

---

[10] The Steam Dredge No. 6 (1915), 222 Fed. 576 (Dist. Ct., S. D. N. Y.).

[11] U. S. Const., Art. III, § 2.

[12] Cf. In re Garnett (1891), 141 U. S. 1, 35 L. Ed. 631, 11 Sup. Ct. Rep. 840.

[13] See supra, n. 6.

[1] (June 11, 1917), 37 Sup. Ct. Rep. 662.

[2] Muller v. Oregon (1908), 208 U. S. 412, 52 L. Ed. 551, 28 Sup. Ct. Rep. 324.

[3] Bunting v. Oregon (1917), 243 U. S. 426, 37 Sup. Ct. Rep. 435.

[4] Stettler v. O'Hara (April 9, 1917), 37 Sup. Ct. Rep. 475.

The law giving rise to the case of *Adams v. Tanner* was an initiative measure of the State of Washington, adopted by popular vote in November, 1914. It prohibited employment agencies from collecting fees from workers seeking employment. The law had been sustained by the Supreme Court of Washington,[5] and by the Federal District Court.[6] Its validity was contested mainly on the ground that the plaintiffs, who were proprietors of private employment agencies in the city of Spokane, would be compelled by the enforcement of the law to discontinue their business and would thereby be deprived of their liberty and property without due process of law.

The majority of the court (Justices McReynolds, Day, Van Devanter, Pitney, and Chief Justice White) held the act invalid as in excess of the police power of the state and in violation of the Fourteenth Amendment. Mr. Justice Brandeis dissented, and Justices Holmes and Clarke concurred with him. Mr. Justice McKenna expressed his dissent, also, in a very brief separate opinion. The character of the argument used in Mr. Justice Brandeis' opinion seems so clearly to vindicate the new spirit of rational approach in dealing with questions of social legislation as to distinguish it as a landmark in constitutional interpretation.

All the court would agree that action by the legislature is final unless the measure adopted is clearly arbitrary or unreasonable, or has no substantial relation to the object sought to be attained.[7] But the method of reasoning is quite different in the two opinions. The majority opinion proceeds from the principle of the right of the individual to pursue any customary, useful and lawful business, and comes to the conclusion that the act in question is an arbitrary and oppressive interference with such a business. The minority opinion, starting from the principle of the power of the commonwealth to control the public welfare, states its criterion of deciding the question in the following words: "Whether a measure relating to the public welfare is arbitrary or unreasonable, whether it has no substantial relation to the end proposed, is obviously not to be determined by assumptions or by *a priori* reasoning. The judgment shall be based upon a consideration of relevant facts, actual or possible. *Ex facto jus oritur.* That ancient rule must prevail in order that we may have a living system of law." The opinion then proceeds to expose and discuss the relevant facts under the four heads: 1. The evils. 2. The remedies. 3. Conditions in the State of Washington. 4. The fundamental problem. In the

---

[5] Huntworth v. Tanner (1915), 87 Wash. 670, 152 Pac. 523; State v. Rossman (Wash. Dec. 5, 1916), 161 Pac. 349.

[6] Wiseman v. Tanner (1914), 221 Fed. 694.

[7] Booth v. Illinois (1902), 184 U. S 425, 46 L. Ed. 623, 22 Sup. Ct. Rep. 425; Otis v. Parker (1903), 187 U. S. 606, 47 L. Ed. 323, 23 Sup. Ct. Rep. 168.

determination of the social, economic and industrial questions involved, the opinion has recourse to the authority of social, economic and industrial experts. From an examination of these sources it readily comes to the conclusions that private employment agencies have been held to be instruments of grievous injustice; that the remedies of indirect regulation practiced by some twenty-four states of the Union have been found unsatisfactory, the best expert opinion favoring the total abolition of private labor agencies; that the peculiar needs in the State of Washington emphasized the defects of private employment offices; and that the fundamental problem was the chronic one of unemployment, and that, while this is perhaps the gravest and most difficult problem of modern industry, the best informed authorities agree that the establishment of an adequate system of employment offices or labor exchanges is the indispensable first step toward the solution of the problem.

Granting the soundness of the facts and arguments adduced, the opinion seemed necessarily driven to the conclusion that the attempt on the part of the State of Washington by the act in question to overcome industrial maladjustment and unemployment must be upheld as within the sphere of the state's police power. As the court said, the law was to be sustained as being similar in kind to a workmen's compensation act, which throws the financial burden of industrial accidents upon the employer.[8]

*W. C. J.*

EVIDENCE: CONFESSIONS: ADMISSIBILITY FOR COURT OR JURY.—The Anglo-American method of trying cases before a divided tribunal, the judge and jury, raises difficult questions as to their respective duties. The court passes upon most disputed questions of fact except the ultimate issues,[1] and sometimes passes provisionally upon ultimate issues and the more important evidentiary matters. In determining whether the original of a document has been lost for the purpose of admitting secondary evidence, the court passes upon that question once and for all. If the copy is admitted, the jury must receive it whether it believes the original was lost or not. On the other hand, in admitting the declarations of an alleged agent, ordinarily there must first be proof of agency. All the court passes on in this case is whether there has been sufficient evidence presented from which reasonable men might find the existence of agency. The jurors should be instructed to disregard the declarations unless they believe agency has been proved.[2] The competency of a witness is passed on by the court without reference to the jury, but as the jurors are the

---

[8] Mountain Timber Co. v. Washington (1917), 243 U. S. 219, 37 Sup. Ct. Rep. 260.

[1] Thayer, Preliminary Treatise on Evidence, p. 248.

[2] Corpus Juris, Vol. 2, p. 940.